Office-Supreme Court, U.S.
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No. 82-1889

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

MADELIN H. KNOLL,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

The opinions below and the basis of this Court's jurisdiction are set out at page 1 of the brief for petitioner (hereinafter Pet. Br.), and the text of the relevant federal statutes appears at Pet. Br. 2-3. The text of the relevant Pennsylvania statutes is set out in the appendix to this brief.

COUNTER-STATEMENT OF THE CASE

"It is now settled that federal courts will turn to state law for statutes of limitations in actions brought under [the Reconstruction] civil rights statutes." *Burnett v. Grattan*, —— U.S. ——, 104 S.Ct. 2924, 2929 (1984). The issue before this Court is what Pennsylvania statute of limitations should be applied to determine the timeliness of § 1983 actions against public officials filed in the federal district courts in Pennsylvania alleging employ-

ment discrimination on the basis of sex in violation of the Equal Protection Clause of the 14th Amendment.

Respondent, a public school teacher employed in the Springfield Township School District in Pennsylvania, filed this lawsuit on April 21, 1981. Named as defendants were the Springfield Township School District, the Superintendent and the members of the School Board. The complaint contained two causes of action: (1) that respondent had been discriminated against by petitioners because of her sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, and (2) that said discrimination denied her the equal protection of the laws guaranteed by the 14th Amendment, and thus was actionable under the Civil Rights Act of 1871 (42 U.S.C. § 1983). Petitioners moved for summary judgment on the ground, *inter alia*, that both causes of action were untimely.

A. *The Decision of the District Court*

The district court granted summary judgment for defendants on both causes of action. It held that the Title VII claim was not timely filed because, in the court's view, plaintiff had filed her charge with the Equal Employment Opportunity Commission more than the allowed 180 days after the last act of discrimination alleged in the complaint (Pet. A 21-22).

The district court dismissed the § 1983 claim as against the School District on a ground other than untimeliness—a holding that was not challenged on appeal (Pet. A 25-26; see *infra* n.4.)

Most pertinent here, the district court held that the § 1983 claim against the individual defendants was time-barred (Pet. A 26-27), because it was not brought within the six-month period prescribed in 42 Pa. Cons. Stat. Ann. § 5522(b)(1), which applies to:

> An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

The district court reasoned that "cases dealing with torts which interfere with another's economic rights or interests" are not covered by any of the more specific limitation provisions of the Pennsylvania statutes, and thus are governed by "the residuary provisions of Pennsylvania's limitations scheme" (Pet. A 27). There are two such "residuary provisions": the six-month provision of § 5522(b)(1) quoted above, and the six-*year* provision of § 5527(6), which is applicable to "[a]ny civil action or proceeding which is [not] subject to another limitation specified in this subchapter." The district court held that "where the claim is against an officer of a government unit for action taken in the execution of his office the clear language of § 5522(b)(1) compels the imposition of the six month limitation period" (Pet. A 27). The court was "persuaded" that

> "§ 5522(b)(1) represents the legislature's considered judgment that actions against public officials which are so uncommon that they do not fall within other specific limitations periods, should be brought within six months." [Pet. A. 27, quoting *Clyde v. Thornburgh*, 533 F.Supp. 279, 288 (E.D. Pa. 1982)].

Accordingly, the court concluded, the § 1983 claim against the individual defendants was untimely because it was not filed within six months of the last act of discrimination alleged in the complaint (Pet. A 27 & n.8).

B. *The Decision of the Court of Appeals*

Respondent appealed the dismissal for untimeliness of her Title VII and § 1983 claims. The court of appeals found that the district court had erred in its disposition of both claims, reversed the summary judgment order, and remanded the case for further proceedings. (Pet. A 18).

With respect to the Title VII claim, the court of appeals noted that in the complaint—the allegations of which had to be accepted as true in the present posture of the case (Pet. A 3, 17)[1]—respondent had alleged "a continuing policy of discrimination" that manifested itself in "three distinct acts of discrimination," the most recent of which (in September, 1980) was less than 180 days prior to the filing of her EEOC charge. Accordingly, respondent's Title VII claim was not dismissable for want of a timely EEOC charge. (Pet. A 16-18).[2]

The court of appeals then turned to the timeliness of respondent's § 1983 claim, which was filed in district court approximately seven months after the alleged discrimination in September 1980. The court of appeals agreed with the district court that the § 1983 claim "does not fit under one of the specific provisions" of "the new Pennsylvania limitations schema," for that schema contains no specific provision "applicable to the torts of wrongful discharge or interference with contractural or economic rights" (Pet. A 7). Accordingly:

> Our focus in this inquiry must shift from probing the nature of the cause of action—which is irrelevant once the more specific, non-residuary provisions have been discounted as inapplicable—to determining which [residuary] statute of limitations the Pennsylvania courts would have applied had this action been brought under state law. [*Id.*]

The court concluded, again in agreement with the district court, that the Pennsylvania courts would have applied the six-month residuary time limit of § 5522(b)(1) (Pet. A 7-8).

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[1] The district court had granted summary judgment on a record consisting solely of the complaint and answer (Pet. A 17).

[2] Petitioners have not sought review of this holding in this Court, and accordingly this case must in any event go back to the district court for further proceedings on respondent's Title VII claim against all petitioners. See Pet. Br. 6 n.5.

The court proceeded to hold, however, that borrowing that time limit would be "inconsistent with the Constitution and laws of the United States" (Pet. A 8, quoting 42 U.S.C. § 1988)), more precisely, "inconsistent with the federal policy underlying [§ 1983]" (Pet. A 9, quoting *Johnson v. Railway Express Agency*, 421 U.S. 454, 465 (1975)). This is so, the court found, for two independent reasons:

First, a six-month time limit is so short that it would substantially undermine the purposes that Congress sought to achieve through enactment of § 1983 (Pet. A 10-12). The court explained:

> We are persuaded . . . that the average plaintiff who has been injured by state action is not sufficiently conversant with the intricacies and subtleties of constitutional law to recognize the constitutional deprivation, consult a lawyer, and prepare a case for filing in court within six months. Such a short statute of limitations is not "sufficiently generous in [its] time period [] to preserve the remedial spirit of federal civil rights actions." *Childers v. Independent School District*, 676 F.2d 1338, 1343 (10th Cir. 1982) (quoting *Shouse v. Pierce County*, 559 F.2d 1142, 1146 (9th Cir. 1977)).
>
> * * *
>
> Applying a six-month statute of limitations would have a decided tendency to severely limit access to the courts for the purpose of vindicating these individual rights. It would be counterproductive to the popular recourse to the Civil Rights Acts. [Pet. A 10, A 11-12].

Second, even if a six-month time limit were not inherently too short, Pennsylvania's particular limitations scheme—which prescribes a six-month residuary time limit for suits against public officials, but a six *year* residuary time limit for identical suits against all other defendants—is "inconsistent with the legislative history and

subsequent judicial construction of [the Civil Rights] Acts" (Pet. A 12). Many of the wrongs condemned by the Civil Rights Acts are made actionable against both public and private persons. For example, race discrimination in private employment is actionable under § 1981, and "would be subject [in Pennsylvania] to a six-year statute of limitations" (A 13). The court "refuse[d] to believe" that the Congress that enacted the Civil Rights Acts—which had as one of its objectives overcoming the states' resistance to the full enjoyment of federal constitutional rights—"intended to sanction" the states' enacting time limits applicable to § 1983 suits against their own officials that are shorter than those applicable to suits against private defendants for "identical" wrongs. (Pet. A 14).

Having concluded that the district court erred in determining the timeliness of this claim by reference to § 5522(b)(1), the court of appeals held "that Pennsylvania's residuary six-year statute of limitations [§ 5527(6)], which applies in the absence of another applicable limitations period, should govern this § 1983 action." (Pet. A 15).[3]

INTRODUCTION AND SUMMARY OF ARGUMENT

"It is now settled that federal courts will turn to state law for statutes of limitations in actions brought under [the Reconstruction] civil rights statutes." *Burnett v. Gratton*, —— U.S. ——, 104 S.Ct. 2924, 2929 (1984). There is no dispute here that a Pennsylvania state court would apply the six-month time limit of 42 Pa. Cons. Stat. § 5522(b)(1) if a suit similar to that filed by respondent

[3] Although challenging the court of appeals' rejection of § 5522(b)(1), petitioners have not asked this Court to review its choice of § 5527(6) as a substitute should this Court agree that § 5522(b)(1) does not control this action. See, *Burnett v. Gratton*, —— U.S. ——, 104 S.Ct. 2924, 2927 n.7 (1984); *Johnson v. Railway Express Agency*, 421 U.S. 454, 462 n.7 (1975).

were filed in state court under state law. The question here is whether application of that statute to respondent's § 1983 claim would be inappropriate, or, as the court of appeals concluded, "inconsistent with the federal policy underlying [§ 1983]."

1. If respondent's suit here had been against a private employer, it is undisputed that Pennsylvania would apply a six-*year*, not a six-*month*, time limit to the action. Pennsylvania would apply a six-month time limit to an action like respondent's under state law only because the action is brought against public officials. Thus, application of the six-month Pennsylvania statute to respondent's § 1983 action would suffer from precisely the defect pointed out in *Burnett v. Gratton*, —— U.S. ——, 104 S. Ct. 2924, 2932 & n.18 (1984): where a state, based on a policy of "prompt resolution of public employee disputes" or of "minimizing the diversion of State officials' attention from their duties," adopts an "abbreviated" time limit applicable only to suits against public officials, the time limit "is manifestly inconsistent with the central objective of the Reconstruction-era civil rights statutes. . . ." The *Burnett* Court recognized that "'[it] would be anomalous for a federal court to apply a state policy restricting remedies against public officials to a federal statute that is designed to augment remedies *against these officials*, especially a federal statute that affords remedies for the protection of constitutional rights.'" 104 S.Ct. at 2932 n.18 (quoting *Pauk v. Board of Trustees*, 654 F.2d 856, 862 (2nd Cir. 1981)) (emphasis added). The legislative history and the scheme of time limits adopted by the state indicate that Pennsylvania's six-month time limit for certain actions against public officials is based on precisely the policies condemned in *Burnett*, and not on the "policies" that petitioners proffer in their brief. But whatever policies may have prompted Pennsylvania's decision to provide an "abbreviated" time limit when the defendant is a public official, the consequent insulation of public officials from suits maintain-

able against all other defendants "is manifestly inconsistent with the central objectives of the Reconstruction-era civil rights statutes" and, under *Burnett*, cannot provide the time limit that controls § 1983 actions.

2. The decision below should be affirmed for a second, and independent, reason: a six-month time limit is too short for application to § 1983 actions, at least in the absence of a significant interest, articulated by the state legislature, that is not inconsistent with the policies informing § 1983. Again, the words of *Burnett* are pertinent here. After evaluating in some detail the "practicalities" of litigating federal civil rights claims, the *Burnett* court concluded (104 S.Ct. at 2930, 2931):

> A state law is not "appropriate" if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts.
>
> * * * *
>
> The [six-month] time limit established by the Maryland legislature reflects in part the minimal burden state law places on the administrative complaint, which does not correspond in any significant way to the substantial burden federal law places on a civil rights litigant.

The court below, based on its own evaluation of the burdens confronting a prospective civil rights plaintiff, was persuaded that in practice a six-month time limit "would have a decided tendency to severely limit access to the courts for the purpose of vindicating these individual rights" (Pet. A 11-12). That concern is borne out by the paucity of state statutes that actually prescribe so short a time limit for the institution of litigation by individuals.

The potential that six-month time limits might, as a practical matter, undermine access to the federal courts under § 1983 is ample justification for concluding that such time limits are *per se* too short for § 1983 actions.

At the very least, in light of the risks inherent in so short a time limit, a six-month limit should not be applied to § 1983 actions unless the state legislature has identified a significant interest, not inconsistent with the federal policies that inform the civil rights laws, that is to be served by that time limit. No such interest has been identified by the Pennsylvania Legislature with respect to the six-month time limit at issue here. Indeed, in this case, because the six-month time limit is "residuary," the state has by definition never identified, much less considered, the types of claims to which the six-month time limit would apply. It follows that the state did not, and could not have, assessed "the interests in favor of protecting valid claims" (*Johnson v. Railway Express Agency*, 421 U.S. 454, 463 (1975)) in establishing that time limit. In these circumstances, it would not be appropriate to apply the six-month time limit here to actions under § 1983.

ARGUMENT

I. THE COURT BELOW PROPERLY REJECTED APPLICATION OF § 5522(b)(1) TO § 1983 ACTIONS BECAUSE IT PRESCRIBES A SHORTER TIME PERIOD FOR SUITS AGAINST PUBLIC OFFICIALS THAN THE STATE LEGISLATURE HAS PRESCRIBED FOR SUITS AGAINST PRIVATE PERSONS CHARGED WITH IDENTICAL WRONGS

As the opinion below explains, under Pennsylvania's limitations scheme an employment discrimination claim by a public employee against a public official must be brought within six months, while an identical employment discrimination claim by a private employee against private defendants may be brought for up to six years. The Pennsylvania statutes thus work two simultaneous discriminations: public employees are afforded a more restricted opportunity to challenge discrimination than pri-

vate employees,[4] and public officials are shielded from accountability for their wrongs for a 5½-year period in which their private counterparts are not.

In *Burnett*, this Court found wanting a contention that certain asserted state interests justified application to § 1983 actions of "abbreviated" state time limits governing suits by public employees and/or suits against public officials:

> Petitioners urge the prompt assertion and resolution of public employee disputes in particular, noting that this important policy is clearly mirrored in . . . an abbreviated period for the filing of claims of employment discrimination . . . That policy, keyed to a classification of plaintiffs, cannot preempt the broadly remedial purposes of the Civil Rights Acts, which make no distinction among persons who may look to the courts to vindicate their federal constitutional rights. If the statute of limitations in Art. 49B is "abbreviated" precisely because it effectuates the narrower state goal, a federal court should look elsewhere in state law for an appropriate limitation period.
>
> Similarly, the state petitioners argue that the short limitations period in Art. 49B should be applied here because it affords public officers "some reasonable protection from the seemingly endless stream of unfounded, and often stale, lawsuits brought against them." . . . This contention under-

[4] As explained *infra*, n.8, the six month time limit of § 5522 (b) (1) does not apply to suits by public employees against the government entity that employs them (as distinguished from the public officials who visited the discrimination). But often the public employee will be unable to seek relief under § 1983 against the government entity, either because of the Eleventh Amendment (*Edelman v. Jordan*, 415 U.S. 651 (1974)), or because the actions of the public official are not chargeable to the entity under the principles of *Monell v. Department of Social Services*, 436 U.S. 658, 691-95 (1978). The latter barrier, for example, was found to be applicable here (see A 25-26, dismissing the § 1983 claim against the School District on the basis of *Monell*).

> cuts rather than buttresses the case for applying the limitations period embodied in Art. 49B to federal civil rights actions. The statement suggests that the legislative choice of a restrictive six-month limitations period reflects in part a judgment that factors such as minimizing the diversion of State officials' attention from their duties outweigh the interest in providing employees ready access to a forum to resolve valid claims. That policy is manifestly inconsistent with the central objective of the Reconstruction-era civil rights statutes, which is to ensure that individuals whose federal Constitutional or statutory rights are abridged may recover damages or secure injunctive relief. [Citing cases].[18]

[18] As the Court of Appeals for the Second Circuit has noted, "[it] would be anomalous for a federal court to apply a state policy restricting remedies against public officials to a federal statute that is designed to augment remedies against those officials, especially a federal statute that affords remedies for the protection of constitutional rights." *Pauk v. Board of Trustees*, 654 F.2d 856, 862 (1981) (rejecting applicability of 1 year and 90-day limitation period in N.Y. Gen. Mun. L. § 50-i (McKinney) for actions against city or its employees to action brought under § 1983), cert. denied, 455 U.S. 1000 (1982).

Burnett, 104 S.Ct. at 2932 & n.18.

The holding below—that a state statute prescribing a separate and shorter time limit for suits against public officials than for comparable suits against private persons should not govern the timeliness of § 1983 actions—parallels precisely the Second Circuit's holding in *Pauk* which this Court endorsed in *Burnett*. In *Pauk*, the Second Circuit had explained:

> § 50-i represents a New York policy to provide more restrictive remedies against municipal employers for their torts than are available against private citizens, for whom the limitations period . . . is three years.

Pauk, 654 F.2d at 862. It is that policy which the *Pauk* court condemned in the passage quoted in *Burnett*.

In an effort to escape the holding of *Burnett*, petitioners proffer an assortment of "state policies"—different from the policies that had been advanced in *Burnett* in support of the time limit there—that would be "fostered" by applying a six-month time limit to suits against public officials. Pet. Br. 21-23. See also Brief of Amici Curiae on Behalf of Pennsylvania et al. (hereinafter State Br.), at 15-17. We do not understand *Burnett*'s condemnation of "abbreviated" time limits for suits against public officials to be confined to those predicated on the particular justifications proffered there. But even if that were the case, petitioners' effort to distinguish the Pennsylvania limitations scheme would be unavailing. For no evidence is tendered by petitioners that the policies they describe are in fact what actuated the Pennsylvania legislature in enacting § 5522(b)(1). To the contrary, such legislative history as exists suggests that § 5522(b)(1) was adopted for the very purpose condemned in *Burnett* (to insulate public officers from "vexatious" lawsuits), and the Pennsylvania limitations scheme makes evident that the "policies" that petitioners and the States proffer are *not* what actuated § 5522(b)(1).

1. As petitioners correctly explain, the Pennsylvania legislature, as part of an overall revamping of its statutes of limitations in 1978, "generalized the six-month statute of limitations set forth in the Act of March 21, 1772 (1 Sm. L. 364), Section 7 . . . so that it became the residual statute of limitations for actions against public officers." (Pet. Br. 13-14).[5] The 1772 Act had applied a six-month time limit only to suits against Justices of the Peace and constables; until enactment of § 5522(b)(1), suits against all other public officials in Pennsylvania were without exception governed by whatever time limits, invariably longer than six months, applied to suits against private persons for the same al-

[5] See Official Source Note, 42 Pa. C.S.A. § 5522, page 24.

leged wrong.[6] The purpose of the six-month statute of limitations in the 1772 Act is not left to speculation; it was stated both in the title of the Act ("An ACT for rendering Justices of the Peace more safe in the execution of their office . . .") and in the first two "whereas" clauses that introduced its substantive provisions:

> WHEREAS Justices of the Peace may be discouraged in the execution of their office, by vexatious actions brought against them, for or by reason of small and involuntary errors in their proceedings; And whereas it is necessary that they should be (as far as is consistent with justice, and the safety and liberty of the subjects over whom their authority extends) rendered safe in the execution of the said office and trust . . .

When this Act was "generalized" in 1978 to become the residual statute of limitations for suits against *all* public officers, the "whereas" clauses were removed—none of the limitation provisions in the revamped Judicial Code contain such clauses—but there is nothing in the legislative record to suggest that the legislature was actuated in 1978 by anything other than what appeared on the face of the 1772 Act whose time period the 1978 legislature extended to all public officers, *i.e.*, to insulate such officers from "vexatious actions brought against them."[7]

2. Moreover, the briefest reflection will make evident that the legislative purpose underlying § 5522(b)(1) *could not* be the quite different factors proffered in the briefs of petitioners and *amici*.

[6] See, *e.g.*, *Skehan v. Bd. of Trustees of Bloomsburg State Col.*, 590 F.2d 470, 476-77 (3rd Cir. 1978).

[7] The extent of the resulting disparity is reflected in the fact that the Pennsylvania legislature enacted a residuary period *near the high end* of the range of more specific time limits for suits against private defendants (six years) and *at the low end* for suits against public officials. We have printed as an appendix to this brief the full text of 42 Pa. C.S.A. §§ 5522-27, the limitations statutes prescribing periods ranging from six months through six years.

a. Petitioners and *amici* both cite the high turnover in public officers as a reason why the government entity would want suits against *it* brought quickly. Pet. Br. 21-22; State Br. 17. But as the States' brief recognizes (at 16 n.5), "the six-month limitation applies to [suits against] officers, but not to [suits against] government entities." The time limit in Pennsylvania for suing government entities for claims subject to the "residuary" time limits is twelve times longer than that for suing public officers on such claims[8]—a scheme that refutes petitioners' suggestion that the six-month limit was prompted by legislative concern for the government's capacity to defend itself.

This same consideration shows that the legislature was not motivated (as the States' brief suggests at 15-16) by interests in "safeguarding the efficacy of the fact-finding process and precluding the overturning of settled expectations"—interests that are equally implicated when the government entity itself is sued.

And, this same consideration also refutes petitioners' speculation (Pet. Br. 22) that the purpose of a short time limit might have been to abbreviate the period in which "two salaries may be required to be paid for a single service"; that concern would have prompted a short time limit for suits against government entities as well.

[8] As government entities are not protected by § 5522(b)(1), "residuary" actions against them, when maintainable (see n.4, *supra*), would be covered by the 6-year residuary time limit of § 5527(6). Section 5522(a) requires six months' *notice* of an intention to sue a government entity for "injury to . . . person or property," a suit that would be governed by the two-year time limits prescribed in § 5524(2) and (3). That notice requirement is not applicable to any other suits against government entities, *Clyde v. Thornburgh*, 533 F. Supp. at 286-87 & n.11, and perforce would not be applicable to any suits governed by the residuary time limits (including employment discrimination actions, which are treated in Pennsylvania as involving injury to "economic interests" rather than to "person or property," Pet. A 7, 27; *Fitzgerald v. Larson*, No. 83-3493 (3rd Cir. Aug. 20, 1984)).

Moreover, petitioners' speculation in this regard presumes that the legislature realized when it adopted the six-month "residuary" time limit that that limit would apply to employment discrimination actions—a proposition for which petitioners offer no support and that, as we explain in the margin, is highly doubtful.[9]

b. Another aspect of the legislative scheme corroborates that the foregoing policies were not what prompted the six-month time limit, and shows as well that the legislature was not motivated by the remaining concern recited in the brief of petitioners (to "foster deterrence of unlawful conduct by public officials" by more promptly exposing their defalcations (Pet. Br. 22-23)). Neither petitioners nor the State is able to explain why, if any or

[9] That the legislature likely did not so realize is evident from the following consideration: The pre-§ 5522(b)(1) cases all had measured the timeliness of employment discrimination actions by reference to contract or tort limitations periods. *Davis v. United States Steel Supply*, 581 F.2d 335, 336 n.1 (3rd Cir. 1978) (*citing cases*). When the limitations statutes were overhauled, specific contract and tort time limits remained (albeit in altered form), and § 5522(b)(1) was made applicable only to those suits against public officials that were not "subject to another limitation." It would have taken an extraordinarily prescient legislature to anticipate that following the revamping of the statutes of limitations courts would no longer look to contract and/or tort limitations periods to determine the timeliness of employment discrimination suits. And, indeed, until settled by the decision below the issue was a subject of conflict among the district courts in Pennsylvania. Contrast the district court decision in the instant case and *Clyde v. Thornburgh*, *supra* (both holding residuary statute applicable) with *Al-Khazraji v. St. Francis College*, 523 F. Supp. 386, 390 (W.D. Pa. 1981) (six-year contract statute applicable); *Hutchings v. Erie City and County*, 516 F. Supp. 1265, 1270-71 (W.D. Pa. 1981) (four- or six-year contract statute applicable); *Mazur v. Department of Revenue, Com. of Pa.*, 516 F. Supp. 1328, 1332 (M.D. Pa. 1981) (same; *dictum*). Put another way, if the legislature had consciously decided that employment discrimination suits against public officials should be governed by a six-month time limit, one would expect it to have so provided expressly in the statute—just as innumerable other causes of action were assigned specific time limits. (See appendix to this brief).

all of the factors they cite had truly been a matter of legislative concern, longer limitations periods were prescribed for the vast majority of suits that are brought against public officers. It must be recalled that § 5522 (b) (1) applies only when there is not a more specific limitations period applicable:

> § *5522(b)*. The residual statute for actions against a public officer (*i.e. for actions other than personal injury, libel, slander, contract of sale, for withholding moneys, on his official bond, etc.*) is fixed at six months.

Pennsylvania Bar Association Judicial Code Explanation, 42 Pa. Cons. Stat., p. xv (emphasis added). And the legislature expected that suits falling within the six-month period would be "uncommon":

> § 5522(b) (1) represents the legislature's considered judgment that actions against public officials *which are so uncommon that they do not fall within other specific limitations periods*, should be brought within six months.

Pet. A 27; *Clyde v. Thornburgh*, 533 F.Supp. at 288 (emphasis added). See also Pet. Br. 20.[10]

In sum, no amount of inventive advocacy can mask the fact that § 5522(b) (1) has no apparent legislative purpose other than to extend the insulation provided by the 1772 Act to protect all public officers against the burden of defending claims that the legislature could not anticipate or evaluate. As stated in the 1772 Act, the objective was to reduce "vexatious" claims against public officers. Section 5522(b) (1) is, accordingly, not the proper basis for determining the timeliness of § 1983 actions; it is not appropriate, and it is "inconsistent with the central objective of the Reconstruction era civil rights statutes . . ." *Burnett*, 104 S.Ct. at 2932.

[10] One other, more insidious, purpose can be imagined: that Pennsylvania enacted an unusually short time limit knowing that its *state-law* applications would be "uncommon," but anticipating that (as is indeed the case) its *federal-law* applications would be substantial—a discrimination against the federal cause of action that would represent an additional reason for not applying § 5522 (b) (1) to § 1983 actions. *Burnett*, 104 S.Ct. at 2931 n.15. As noted above (p. 15 & 9), there is no evidence that the legislature had civil rights actions (state *or* federal) in mind when it enacted § 5522(b) (1). But the *effect* of the Pennsylvania limitations scheme is precisely such discrimination, even if not intended.

II. SIX-MONTH TIME LIMITS ARE TOO SHORT FOR APPLICATION TO § 1983 ACTIONS, AT LEAST IN THE ABSENCE OF A SIGNIFICANT INTEREST, ARTICULATED BY THE STATE LEGISLATURE, THAT IS NOT INCONSISTENT WITH THE POLICIES INFORMING § 1983

In *Burnett*, this Court identified the "practicalities that are involved in civil rights claims" that persuaded the Court that a state's six-month time limit for filing a charge with an administrative agency was not the "appropriate" state statute to adopt for determining the timeliness of civil rights lawsuits:

> An appropriate limitations period must be responsive to [the] characteristics of litigation under the federal statutes. A state law is not "appropriate" if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts.
>
> Applying these criteria for disqualifying a particular state law, we begin with the observation that . . . the dominant characteristic of civil rights actions [is that] they belong in court. . . . Assuring the full availability of a judicial forum necessitates attention to the practicalities of litigation. Litigating a civil rights claim requires considerable preparation. An injured person must recognize the constitutional dimensions of his injury. He must obtain counsel, or prepare to proceed pro se. He must conduct enough investigation to draft pleadings that meet the requirements of federal rules; he must also establish the amount of his damages, prepare legal documents, pay a substantial filing fee or prepare

additional papers to support a request to proceed in forma pauperis, and file and serve his complaint. At the same time, the litigant must look ahead to the responsibilities that immediately follow filing of a complant. He must be prepared to withstand various responses, such as a motion to dismiss, as well as to undertake additional discovery.

* * *

. . . The [six-month] time limit established by the Maryland legislature reflects in part the minimal burden state law places on the administrative complainant, which does not correspond in any significant way to the substantial burden federal law places on a civil rights litigant. [104 S. Ct. at 2930, 2931 (footnotes omitted).] [11]

The court below, writing before *Burnett*, evaluated similarly the practical burdens confronting the prospective civil rights plaintiff (Pet. A 10-12, quoted *supra* at 5), and was persuaded that in practice a six-month time liimt "would have a decided tendency to severely limit access to the courts for the purpose of vindicating these individual rights" (Pet. A 11-12).

That this concern is widely shared is evidenced by the paucity of state statutes that actually prescribe so short a time limit for the institution of litigation by individuals. In Pennsylvania, for example, as petitioner explains (Pet. Br. 14 n.11):

> the statutory scheme, conforming "to the modern principle that claims based on conduct, and hence heavily relying on unwritten evidence, should have relatively short statutes of limitations . . ." (*Pennsylvania Bar Association Judicial Code Explanation*, supra, at p. xvi-xvii) consequently set the limitation period for libel, slander and invasion of privacy at one (1) year, 42 Pa. Cons. Stat. Section 5523; for assault, battery, false imprisonment, false arrest, malicious prosecution, malicious abuse of process, actions to recover damages for injury to the person or for wrongful death, or for the taking, detaining or injuring of personal property at two (2) years, 42 Pa. Cons. Stat. Section 5524 [and on up to progressively longer time limits for less conduct-based claims].[12]

The Pennsylvania pattern is typical.[13] That states prescribe one-year time limits even for those claims of individuals thought most needful of prompt initiation is testament to a general legislative understanding that any shorter time limits might as a practical matter deprive prospective plaintiffs of their cause of action.

Of course, there can be unique situations in which competing interests can dictate a need for exceptionally short time limits. The labor relations context provides perhaps the most prominent example, and this Court indeed has "borrowed" a six-month statute of limitations to determine the timeliness of certain lawsuits in that context. *DelCostello* v. *Internat'l Brotherhood of Teamsters*, 462 U.S. ——, 103 S. Ct. 2821 (1983). But as this Court explained in *Burnett*, 104 S. Ct. at 2931 n.14, "we do not find [*DelCostello*] relevant to the civil rights issue before us . . . The importance of uniformity in the labor law field, and 'the realities of labor relations and litigation,' *id.* at ——, informed our decision [in *DelCostello*]." [14]

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[11] But see, *id.* at 2936 (concurring opinion of Justice Rehnquist): Unlike the Court . . . I do not believe that the 'practicalities' of litigation necessarily mean that a six-month limitations period is an unreasonable time in which to bring a federal cause of action.

[12] As petitioner goes on to note (Pet. Br. 15 n.11), apart from § 5522(b)(1) Pennsylvania has prescribed a six-month time limit for only three narrowly defined causes of action.

[13] The statutes of limitations of each state are described in VII *Martindale-Hubbell Law Directory, Law Digests* (1984), under the caption "Limitation of Actions."

[14] Petitioners and the States cite early decisions of this Court refusing to hold certain state statutes of limitations *unconstitutional* because of their shortness (Pet. Br. 16-17 n.13; State Br. 31). Those decisions provide petitioners no support, even apart

Given the potential that six-month time limits might undermine access to the federal courts under § 1983, and the reality that states do not prescribe time limits that short even for those torts deemed most needful of prompt initiation, there is ample justification for a ruling that such time limits are *per se* too short for application to § 1983 actions. It is, however, possible to resolve the instant case on the basis of a narrower proposition: that, in light of the risks inherent in so short a time limit, at the very least a six-month time limit should not be applied to § 1983 actions unless the state legislature has identified a significant interest, not inconsistent with the federal policies that inform the civil rights laws, that is to be served by that time limit.

No such interest has been identified by the Pennsylvania legislature with respect to the statute at issue here. As we have shown, *supra* at 12-13, such evidence as exists suggests that the six-month time limit was enacted here merely to shield public officers from the bur-

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from the consideration that a different question was being answered than that posed here.

Burrill v. Locomobile Co., 258 U.S. 34 (1922), involved a six-month time limit for suits by corporations challenging corporate tax assessments. The Court's holding, *id.* at 38, was:

> The time for filing the petition is not unreasonably short for this class of cases, considering that the statute is dealing with taxes on the one side and business organizations on the other.

The other three decisions cited by petitioners and the States did not involve the constitutionality of short statutes of limitations *vel non*, but rather the constitutionality of statutes shortening the *remaining* time for filing suit on causes of action that had accrued years earlier. *Terry v. Anderson*, 95 U.S. 628 (1877) (statute reduced to nine months and 17 days the *remaining* time in which to institute causes of action that had accrued at least four years earlier); *Mills v. Scott*, 99 U.S. 25, 27-28 (1879) (same); *Turner v. State of New York*, 168 U.S. 90, 94 (1897) (statute reduced to six months the *remaining* time in which to institute suit seeking to overturn the conveyance of land to the State for non-payment of taxes in "those cases only in which the conveyance has been of record for two years . . .").

dens of defending litigation—a purpose this Court has found antithetical to the federal policy underpinning § 1983. *Burnett*, 104 S. Ct. at 2932. And even if that evidence were deemed too equivocal to permit a finding that that was the legislative purpose, what would remain is a complete absence of *any* articulated legislative purpose for a time limit that short.

Indeed, deference to a state's choice of aberrationally short time limits should be at its least when, as here, the time limit is "residuary." Such time limits do not reflect the weighing of competing values by the State legislature that this Court has understood to be the reason for Congress' reference to state rules of decision in § 1988:

> Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects *a value judgment* concerning the point at which *the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.* . . . In borrowing a state period of limitations for application to a federal cause of action, a federal court is relying on *the state's wisdom* in setting a limit . . . on the prosecution of a *closely analogous claim.*

Johnson v. Railway Express Agency, 421 U.S. 454, 463-64 (1975) (emphasis added).[18] In the instant case, petitioners and the States invoke this analysis in support of their positions (Pet. Br. 19; States Br. 24, 27). But the analysis is inapposite in the case of a residuary statute. Such a statute may reflect the legislature's view

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[18] See also, *Burnett*, 104 S. Ct. at 2930-31 (emphasis added):

> When a legislature selects a statute of limitations to govern a *particular cause of action*, it takes into account the burdens borne by the parties to a *suit of that sort*. . .
>
> A legislative definition of a statute of limitations also reflects a policy assessment of the state causes of action to which it applies. . .

about the need for repose, but as the causes of action that may fall into its ambit have not been individually identified and evaluated, the need for repose cannot have been balanced against the interests inhering in those causes of action. What "weight" can the State have assigned to "the interests in favor of protecting valid claims," when the claims in question are ones the State has not identified or considered?[16] And what significance should federal courts attach to the State's choice of a "residuary" time limit of exceptional shortness when not only has there been no legislative consideration of the implications for federally-created rights or even of "closely analogous" state-created rights, but the time limit was thought to be applicable only to "uncommon" causes of action (see p. 16, *supra*)? This Court's admonition in *Burnett* seems precisely applicable to such "residuary" time limits:

> A state law is not "appropriate" if it fails to take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Acts. [104 S.Ct. at 2930].

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[16] The one employment discrimination cause of action for which the Pennsylvania legislature has specifically considered the appropriate time limit—a suit for violation of Pennsylvania's Equal Pay Act, 43 P.S.C.A. § 336*ff* (which applies to public as well as private employees, *id.* at § 336.2(a))—may be brought "within two years from the date upon which the violation complained of occurs" (*id.* at § 336.5(b)). The statute had originally contained a one-year time limit, but was increased to two in 1968. See 43 P.S.C.A. § 336.5, Historical Note.

CONCLUSION

For the reasons set forth hereinabove, the decision below should be affirmed.

Respectfully submitted,

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